

# Montana Transportation Commission

## **April 30, 2007 Meeting**

MDT Commission Room  
2701 Prospect Avenue  
Helena, MT

### **IN ATTENDANCE**

Bill Kennedy, Transportation Commission Chair  
Kevin Howlett, Transportation Commissioner  
Rick Griffith, Transportation Commissioner  
Nancy Espy, Transportation Commissioner  
Dee Winterburn, Transportation Commissioner  
Jim Lynch, MDT Director  
Jim Currie, MDT Deputy Director  
Loran Frazier, MDT Engineering  
Tim Reardon, MDT  
Duane Kailey, MDT  
Mick Johnson, MDT  
Sandra Straehl, MDT Rail, Transit & Planning  
Ted Burch, FHWA  
Mike Duman, FHWA  
Charity Watt-Levis, MDT  
Lori Ryan, MDT

*Please note:* the complete recorded minutes are available for review on the commission's website at [http://www.mdt.mt.gov/pubinvolve/trans\\_comm/meetings.shtml](http://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml). You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or [lrain@mt.gov](mailto:lrain@mt.gov). Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

### ***OPENING – Chairman Bill Kennedy***

Chairman Bill Kennedy called the meeting to order and read through the Meeting Agenda. After the pledge of allegiance, Commissioner Howlett offered the invocation.

Chairman Kennedy went over the agenda and explained that at 1:00 Nancy Espy will take over the Chair of the meeting because Chairman Kennedy had recused himself from the Outdoor Advertising Appeal. There were no changes to the Agenda.

Commissioner Espy moved to approve the Agenda. Commissioner Winterburn seconded the motion. All five commissioners voted aye.

The motion passed unanimously.

### **Approval of Minutes of February 22, 2007 Regular Meeting, March 5, 2007 Conference Call, and the April 9, 2007 Conference Call.**

Chairman Kennedy asked if there were any additions, deletions, or changes to the Commission Meeting Minutes for the February 22, 2007 Regular Meeting, the March 5, 2007 Conference Call, and the April 9, 2007 Conference Call. There were no additions, deletions, or changes made to the minutes.

Commissioner Winterburn moved to adopt the minutes as presented. Commissioner Espy seconded the motion. All five commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 1: West Fork Road**

Director Jim Lynch gave the background on West Fork Road. He explained there was a condition on the project and asked Duane Kailey to present the specifics to the Commission.

Duane Kailey explained that about one year ago, May 2006, Secondary 473, had a slide occur. Since that time MDT had been attempting to secure a funding source to repair the roadway. He passed around pictures of the road slide and the damage to the road. Since May MDT has instituted a detour. The detour begins right here (referring to graphic), routes traffic down U.S. 93 onto the Conner cut-off road. The entire section is paved but it is forcing residents in the area to go south, turn onto the Conner cut-off road and over to U.S. 93 and then proceed north if that is their intended direction. The road is still closed in that section. There are some homes adjacent to the roadway but the majority of residences are to the south of the closure. The road is a State designated Secondary Highway that goes to Painted Rocks Reservoir; there are some county roads and some forest service roads that split off of it farther down. The majority of the traffic is not the residents but the public who want to get from point A to point B. Director Lynch said that the department is concerned because it has put a lot of traffic through a residential area. The residents are concerned and want the road repaired.

Chairman Kennedy explained that when Secondary Road System was passed by the Legislature, all the money in the districts was pooled together. The reason was all the smaller counties could never get enough money to get a project going so the Commission voted that every county would get a project. They pooled the money together and the project on top would be the first project. As the money ran out, everybody would get a project before going back and asking for the second round of projects. We are still on the first round of projects. The problem with this system is when we have an emergency situation, which happened last year in my District. We had a slide and so we notified everyone in writing and by phone and got everybody on board. We let them all know about the slide area. We then moved some money up to fix that slide area and left all the other priorities in place. The Ravalli County Commissioners did not want to lose their place in the list of projects. The District had already set their priorities; in fact they re-set the priorities last year because Missoula County wanted to change their priority. Because of that there has been a lot of confusion in this District. We could go ahead and fix this and move it to the top of the list and leave their priorities in place and just move the money up and go ahead and fix this just like we did in my district. Loren is saying that we really need to do this because it is a real safety issue and it is a secondary road. We have heard over and over from the Commissioners that there are only nine families who live on the road but Loran pointed out that it is not just the people who live there that use the road but it is a public recreational access site also. As you know, as we start getting into state and federal lands and access points, we get into some real sticky ground. The proposal that Loran is suggesting is that we go ahead and move this project up and leave the priorities in place and go ahead and allocate this.

Sandy Straehl presented the following:

### **Background**

MDT staff requests commission approval for preliminary engineering and a construction project to correct a slide that has closed the West Fork Bitterroot Road (Secondary-473, at approximately reference point 0.5) north of Connor. Channel migration of the West Fork Bitterroot River and the resulting scour has undercut the roadway, which is currently sliding into the river. In addition, hillside springs on the

west side of the road drain into the roadside ditch and have created saturated soils and slope instability. The slide has affected approximately 200 feet of highway.

This highway provides access to recreational lands and repair this construction season is time-sensitive so that travelers can access recreational destinations as soon as possible. MDT has evaluated the situation and believes an engineering solution exists to repair the roadway.

The highway is maintained by Ravalli County and is not Ravalli County's priority for the Secondary Roads Capital Construction Program. Further, the Missoula District Counties voted to not include this project in the Secondary Roads Capital Construction Program.

However, MDT believes that a time-sensitive slide correction is needed, which compels programming of a project to return this Secondary Highway to service for the benefit of the traveling public. At this time, MDT proposes using State Funded Construction (SFCS) funds for preliminary engineering only and Federal-aid Secondary Road Construction (STPS) funds for the remaining phases of the project.

Total estimated project cost is \$978,000 consisting of \$46,000 for preliminary engineering, \$77,000 for construction engineering, \$772,000 for construction, and \$83,000 for right of way and incidental costs including utilities. The project costs include \$96,223 of indirect costs.

### **Summary**

MDT staff is requesting approval of a preliminary engineering phase in the amount of \$46,000 in State Funded Construction (SFCS) and \$932,000 in Secondary Road Construction (STPS) to address a slide condition on West Fork Road (S-473, R.P. 0.5). This action is needed to address the failure of the roadside embankment and bring Secondary Highway 473 back into service.

### **Staff recommendations**

Staff recommends the Commission approve the addition of this project to the program.

### **Discussion**

Chairman Kennedy asked Duane how far back this pushed projects in the District. Duane said that with the allocations and the TCP we have right now, it will not affect the projects until approximately 2010 or 2011 and at that time the project that will be affected will be Ravalli County's project up at milepost 10 where they are doing a reconstruct on a curve and a bridge. It will cause a year delay. Director Lynch said it may not even be a year delay because of the fact that this road goes to public lands and we have requested from the federal government the public lands discretionary funding. The department will also look at other sources to infill. Director Lynch said because of the location of the roadway, the department feels confident this project will qualify for the federal discretionary funds. Duane Kailey said that even if this project doesn't qualify for the funds, there are other funds around Missoula County that will qualify for those funds to make up the difference. Commissioner Kennedy stated that Missoula County Commissioners were under the impression that they would have to remove their top priority from the list and replace it with the slide project; so they will be grateful to know they will get the slide will get fixed without removing their top project from the list.

Director Lynch said there was a philosophical issue with this because we have a federal aid system that we have to manage. There are two cases where we delegate the authority to designate projects on a federal aid system; one is the urban system and the other is the secondary system. Where we have delegated that, it is important for the local jurisdiction to realize they have a federal aid system within their financial

district they need to maintain and if they don't then the state has to move to make sure that happens.

Commissioner Howlett moved to approve the staff recommendations as presented, Commissioner Espy seconded the motion. All five commissioners voted aye.

The motion passed unanimous.

## **Agenda Item 2: Enhancement Program on MDT Right-of-Way**

Sandra Straehl presented the following to the Commission. She explained this was for two Enhancement Projects on MDT Right-of-Way: Town Square Sidewalks in Plentywood and a Bike and Pedestrian Path in Lolo. The first one is part of an overall plan to beautify the center of town in Plentywood. The second one is to serve children who are walking to Lolo schools from subdivisions that were not anticipated that they are now trying to connect to the schools.

**Town Square Sidewalks - Plentywood** – This enhancement project will design and construct approximately 3200 square feet of sidewalks and 60 lineal feet of curb and gutter. The project extends approximately 160 feet west and south from the intersection of 1<sup>st</sup> Avenue (N-22, reference point 41.674) and Main Street in the City of Plentywood.

This project will enhance the recently renovated Town Square in Plentywood, which includes a pavilion built in 2006. The park is host to many community events with pedestrian traffic and serves as a picnic area for traveling motorist. The project will replace the existing perimeter sidewalks on the north and east side of the Town Square.

The estimated total cost of the project is \$32,300 consisting of \$3,000 for preliminary engineering, \$1,800 for construction engineering and \$27,500 for construction. The City of Plentywood's CTEP allocation and local match will be the funding sources for this project. Including this project, Plentywood will have obligated \$153,729 of the \$166,813 made available over the life of the CTEP program.

**Bike/Pedestrian Path - Lolo** – This enhancement project will design and construct approximately one mile of a hard surfaced 8' to 10' wide pathway. The path is an extension to the existing walkway along U.S. Highway 12 (N-93) in the City of Lolo. The path is located along the south side of Highway 12 (N-93) starting approximately 1000' west of the junction of US 93 (N-7, reference points 31.35 to 32.37) and continuing west approximately one mile on Highway 12.

This project will tie into a walkway built with CTEP funds in 2003. At the time the existing walkway/bicycle path was constructed current subdivision developments were not foreseen. Subsequent growth of the subdivision developments west of Lolo along Highway 12 has necessitated the extension of the path to serve school children walking into Lolo schools from the subdivisions and local recreational use.

The estimated total cost of the project is \$138,000 consisting of \$7,000 for preliminary engineering, \$6,000 for construction engineering and \$125,000 for construction. Missoula County's CTEP allocation and local match will be the funding sources for this project.

Including this project, Missoula County will have obligated \$2,686,492 of the \$2,895,901 made available over the life of the CTEP program.

### **Summary**

This agenda item is for two on-system enhancement projects being proposed for commission approval using CTEP allocations to the respective local governments.

1. The *Town Square – Sidewalks – Plentywood* project is estimated at a total project cost of \$32,300. The project is located around the perimeter of the Town Square on 1<sup>st</sup> Avenue (N-22) and Main Street in Plentywood and will be developed in accordance with all federal and state requirements.
2. The *Bike/Pedestrian Path – Lolo* project is estimated at a total project cost of \$138,000. The project will extend an existing pathway approximately one mile further on the south side of Highway 12 (N-93) in Lolo. This project will be developed in accordance with all federal and state requirements.

**Staff recommendations**

Staff recommends that the commission approve the addition of these projects to the program.

Commissioner Espy moved to approve the enhancement Program in MDT Right-of-Way. Commissioner Griffith seconded the motion. All five commissioners voted aye.

The motion passed unanimous.

**Agenda Item 3: Culvert Improvements, Northwest of Rodgers Pass**

Sandra Strachl presented the following to the Commission.

**Background**

MDT staff is requesting commission approval for the addition of a project into the program. Staff has identified an existing stock-pass (culvert) on Highway 200 (N-24, reference point 99.52) just south of the junction with Secondary 434 that is in need of rehabilitation.

The existing stock-pass is a 12'2" span x 11' rise structural steel plate pipe arch that has experienced settlement and upheaval which has caused pavement distress. The roadway has been patched 3-4 times, indicating ongoing settlement. The crown of the pipe is located in the base section of the road and is experiencing large amounts of runoff at times through the top of the pipe. The MDT Geotechnical section and Hydraulic section recently completed a field review of the pipe and recommended that replacement of the pipe would avoid the possibility of a complete failure.

MDT staff is proposing to insert a large diameter round steel pipe inside the existing stock-pass and pump grout or flow-able fill in the interstitial space. MDT Geotechnical concurs with this proposed solution. The insertion of the pipe will provide the structural adequacy required to eliminate the possibility of failure and will provide the function of the stock-pass. Inserting a round pipe in the stock-pass is estimated to cost approximately one-third of the cost of replacing the pipe. This stock-pass is within the limits of a 2008 pavement preservation project, Rogers Pass – East, and staff plans to coordinate these two projects.

Staff proposes using National Highway (NH) funds for this project. The estimated total cost of the project is \$224,037 consisting of \$26,618 for preliminary engineering, \$17,947 for construction engineering, and \$179,472 for construction. The cost estimate includes \$24,442 in indirect costs. The Great Falls District will have sufficient apportionment and obligation authority in the NH program to advance this project in 2008.

**Summary**

An existing stock-pass located on Highway 200 (N-24, R.P. 99.52), is showing evidence of settlement and upheaval requiring frequent patches to the pavement. Staff is proposing to insert a round steel pipe into the stock-pass to stabilize it and prevent the possibility of its failure and further damage to the road. The project will

be coordinated with the 2008 Rogers Pass-East pavement preservation project. The total costs are \$224,037 using NH funds.

**Staff recommendations**

Staff recommends that the commission approve the addition of project to the program.

**Discussion**

Commissioner Kennedy asked if this was the stock pass that had been fixed a couple of times over the last two years. Sandy said the pavement had been fixed because of settling. The pavement is failing above it, so when they do the project they will fix the stock underpass at the same time and that should stabilize the pavement surface. Commissioner Espy said evidently water has come down and around the cattle pass. Sandy said it was undercutting the materials underneath it and explained this would be a relatively cost-effective fix for it.

Commissioner Griffith moved to accept staff recommendations to approve; the Culvert Improvements, Northwest of Rodgers Pass. Commissioner Espy seconded the Motion. All five commissioners voted aye.

The motion passed unanimous.

***Agenda Item 4: Off System Bridge Replacement: Pipe Creek, 4M NW of Libby***

Sandy Straehl presented the following to the Commission:

**Background**

MDT staff is requesting Transportation Commission approval for the addition of a bridge rehabilitation project into the Off-System Bridge program. This project met the statewide selection criteria in the latest round of off-system bridge nominations and is Lincoln County's top priority. The bridge is located 4 miles northwest of Libby over Pipe Creek. (Location: Range 31 W, Township 31 N, Section 29 in Lincoln County).

Fish, Wildlife and Parks (FW&P) has identified this bridge as a high priority for replacement. FW&P is doing a stream restoration project at the site and may be willing to add funding. FW&P has done some preliminary engineering including examining hydraulics and replacement bridge sizes. MDT anticipates using this engineering to expedite the process. Potentially it could be ready to let as early as FFY 2008. FW&P would like to see it constructed as soon as it is deliverable.

The estimated total cost for the project is \$500,203 consisting of \$57,673 for preliminary engineer, \$57,673 for construction engineering and \$384,857 for construction. The cost estimate includes \$49,203 in indirect costs. There is sufficient apportionment in the Off-System Bridge Program for construction of this project in 2008, but insufficient obligation authority. The Bridge Program Manager understands that a project may have to be rescheduled for this project to enter the construction program and that this decision will be made during the Red Book meeting this fall.

**Summary**

This project met the statewide selection criteria for bridge replacement. The estimated total project cost is \$500,203 using BR funds. FW&P will provide some preliminary engineering and analysis to assist in project development.

**Staff recommendations**

Staff recommends the Commission approve the addition of this project to the program.

### **Discussion**

Chairman Kennedy asked Director Lynch if he remembered when they talked to the Lincoln County Commissioners about their road project to Libby on Highway 2 because they were worried about all the money going to Hwy 93. He asked if this bridge was part of that system. Director Lynch said no; this is an off-system bridge on a county road. Commissioner Winterburn asked Sandy the likelihood of getting money from Fish, Wildlife and Parks for this project. Sandy said they always try to find a way to partner on projects that have public concern and are important to other agencies. She explained that at this point they had not committed any construction dollars but they are participating in providing some technical expertise and have done studies that will hopefully be used in making it easier to get through the departmental review process but actual construction dollars have not been committed.

Commissioner Winterburn felt they should contribute to the construction of the project. Commissioner Howlett asked if there was any federal involvement from the Kootenai National Forest. Sandy said there is no other participation for the construction phase of this project. She said most of the forest highway monies are prioritized through a tri-agency process which includes the Forest Service, Federal Highway Administration, and MDT. This project has not been prioritized through that tri-agency process for construction purposes. Director Lynch told the Commission the department was basically asking the Commission to allow them to proceed with the design. We may be charged as a department to look at other funding sources to solve this problem and that would be the time to discuss this. Right now we are asking whether or not you think it is wise for us to go forward with the initial design on this project with the help we are getting from Fish, Wildlife and Parks.

Commissioner Winterburn asked if the bridge were mainly about habitat. Sandy said in order for the bridge to be ranked as high as it was in the Off-System Bridge ranking process, it had to be structurally deficient. Director Lynch said it was a habitat-impact bridge. Chairman Kennedy said they were dealing with two things: (1) it is not a structurally sound bridge that needs to be replaced, and (2) the wildlife habitat which is also a cost factor in the bridge which probably pushes the cost factor up quite a bit. Director Lynch said MDT would like to say it is a Fish, Wildlife and Parks problem but they say it is our problem. I believe it is a habitat problem and there are multiple state agencies that should be involved in solving the problem.

Commissioner Howlett asked if this approval included construction. He asked if it was MDT's desire to approve the entire thing at this point or do the preliminary engineering and come back in the fall for the construction. Director Lynch said the approval is for the design and moving forward with the project from a planning standpoint. The construction will be taken care of in the Red Book process. You are agreeing that this is a valid project for MDT to be taking on and that we should move forward with it. Chairman Kennedy said it will also give the Commission an opportunity to set it in the Red Book on priorities.

Commissioner Howlett moved to accept the staff recommendation to approve the Bridge Replacement: Pipe Creek, 4M NW of Libby. Commissioner Griffith seconded the Motion. All five commissioners voted aye.

The motion passed unanimous.

### **Agenda Item 5: Slide Correction, West Broadway Slope Failure**

Sandy Straehl addressed the commission as follows:

**Background**

The Missoula District has discovered a back slope failure area in Missoula on the south side of West Broadway (Dept. Route: X-32758, R.P. 4.1) which is a state maintained off-system route. The failed area is approximately 200' in length and has slid down into the roadside ditch. The slide may have an impact on the private land owner at the top of the cut section. The recommended repair includes excavation of the slope in the failure area and replacement with a rock buttress underlain with a geotechnical layer.

MDT staff is proposing to use Missoula District Surface Transportation Program-Primary (STPP) funds that will be transferred to the off-system (STPX) for 2008 construction. The funding transfer would be internal to Missoula and not impact any other district. The estimated total project cost is \$228,473 consisting of \$17,745 for preliminary engineering, \$27,727 for construction engineering and \$183,001 for construction. The cost estimate includes \$22,473 in indirect costs. There is sufficient obligation authority in the STPP for the Missoula District to fund this project in 2008. This road is functionally classified as a minor arterial and is thus eligible for federal Surface Transportation Program funding even though it is not a designated state highway.

**Summary**

A slope failure has occurred on the south side of West Broadway (Dept. Route X-32758, R.P. 4.1) in Missoula. Staff proposes to excavate the failed area and replace it with a rock buttress underlain with a geotechnical material layer. Staff proposes using STPP funds allocated to Missoula District for the estimated total cost of \$228,473.

**Staff recommendations**

Staff recommends the commission approve the addition of the project to the program.

**Discussion**

Commission Howlett asked if it would affect the Missoula District by having an impact on other projects in District One. Sandy said there is sufficient obligation and apportionment authority in the District One Surface Transportation Primary Program to absorb the project without displacing any other projects.

Commissioner Howlett moved to accept the staff recommendation to approve the Slide Correction, West Broadway Slope Failure. Commissioner Griffith seconded the Motion. All five commissioners voted aye.

The motion passed unanimous.

**Agenda Item 6: STPP Funds Transfer to the IM Program**

Sandy Straehl addressed the Commission as follows:

**Background**

MDT staff is requesting the Transportation Commission approve the transfer of funds from the Surface Transportation Program-Primary (STPP) funds into the Interstate Maintenance (IM) program as per MCA 60-3-205(5)(a).

On March 5, 2007 the Great Falls District submitted a request through the Priority Change Committee to change their 2007 Pavement Preservation priority. Their priority was the Hays to Ft. Belknap project which was scheduled for a March 2007 letting. The District has been unable to obtain a Memorandum of Understanding (MOU) with the Fort Belknap Reservation. As a result, this project has been moved out of fiscal year 2007, thus freeing up \$3,756,427 in 2007 Pavement Preservation



funds. The district has identified four other pavement preservation projects, whose design is complete, to substitute for this project.

The District is proposing to use the available 2007 Pavement Preservation STPP funds to construct the following four projects:

Valier- East – P-44	\$446,425
Main Ave.-Choteau – P-3	\$482,788
Cascade-Ulm – I-15	\$1,067,676
Great Falls – Urban – I-315	<u>\$1,104,737</u>
	*\$3,101,626

\* A cost savings of \$654,801

The Priority Change Committee approved the request to use the available 2007 Pavement Preservation STPP funds for these four projects. However, two of these projects are on the Interstate system, (Cascade – Ulm and Great Falls – Urban), and transferring the STPP funds in the amount of \$2,172,413 into the Interstate Maintenance (IM) program, requires Transportation Commission Approval.

### Summary

The Priority Change Committee has approved the Great Falls District's request to replace the Hays to Ft. Belknap 2007 pavement preservation project with the four projects proposed by the District using STPP funds. Two of these projects are on the IM system and staff is requesting approval from the Transportation Commission for the transfer of \$2,172,413 of STPP funds into the IM program to construct these two IM projects.

### Staff recommendations

Staff recommends the commission approve the transfer of funds from the STPP program into the IM program for the construction of these pavement preservation projects.

### Discussion

Director Lynch said these are already Red Book programs that have been approved; we are just getting your permission to advance them into this year. Commissioner Howlett asked what the obstacles were to getting the MOU. Director Lynch said there were not a lot of obstacles, we actually had one but they requested some changes to it. He explained this project had to do with timing – we needed to advance this project into the construction phase a year ago but because we didn't it actually put the project out. We have obligation money to spend in this particular district this year and we don't want that to lapse. The point is that you have a project that cannot go to bid this year and we want to move projects that are ready to go into the process this year. Commissioner Howlett asked why it couldn't go to bid with the MOU by the end of the year. Mick Johnson explained the project needed to be in the May letting to go to bid for this year and he didn't believe they were going to have an MOU by then. There is \$3.9 million set aside for a 35-mile job on the Fort Belknap Reservation and rather than leaving that money sitting there, MDT would like to make sure that it gets spent this summer. I've moved projects from the next year back to this year; if we get and MOU I'll move that project to next year. Commissioner Howlett felt that if there was some bureaucratic fence that we can't get over, we probably need to figure that out because that road needs to get fixed. If we bump \$3.9 million out of it, it is going to be a little bit of time before we get it back in there. We are going to have the same bump next year except in the other direction – we are going to have to bump money back in to cover the Fort Belknap project because we've pushed it out. Director Lynch explained that we are moving these projects up; therefore these projects won't be in your system next year. It also has to do with the timing of this project, in order to meet bid letting and scheduling and construction for this year we had to have it resolved by February of this year. Commissioner Howlett asked if all these were 2008 projects. Director Lynch said all they were doing is infilling where they can't fund the projects.

Chairman Kennedy asked if the department was going to work on getting the MOU signed so it can go out to bid for the next year. Director Lynch said yes. Chairman Kennedy asked if the Tribe knows this was going to be pushed back. Director Lynch said yes. Chairman Kennedy asked if they were still in negotiations with the Tribe. Director Lynch said yes. Chairman Kennedy asked when it was going to get resolved. Director Lynch said he felt confident it would be resolved this year. Commissioner Espy said several times last year her district had negotiated MOUs with the Tribe and noted that it takes a lot of time to get them settled and understood by both parties. She felt very confident in this proposal because with the projects that are going to be substituted and worked on are already in the Red Book, so the money that was allotted to them that will go back into the bids. I think it is a very good move. Director Lynch said if the MOU were signed today, we still could not advertise and bid it this construction season because it had to be settled in February to do that.

Chairman Kennedy asked if the project timeline was for one construction season. Mick Johnson said the project is 35 miles long, 18 miles of it is overlay, but all 35 miles is chip seal. The chip seal season ends August 30<sup>th</sup>. Even letting it in May, we would be pushing our luck to get the chips crushed and get the contractor to get it down by August 30<sup>th</sup>. Chairman Kennedy asked if they would lose any of the road between now and next year. Mick said he and his engineer drove the whole length of the project; we are concerned about that but we don't think we will lose any of it.

Commissioner Howlett asked for some language in the motion so that the Ft. Belknap project would not be lost. Director Lynch said it was not our intent to lose a project; it is our intent to spend the money that was available. That is what your action is doing. If we didn't bring this to you, we would be sitting out there with obligation money we would not be able to use this year. Because we cannot build this project today, we are asking you to move some other projects forward. It is not our intention to let this project slip. We have had numerous conversations to get this resolved so we can get this project built; we are as much in favor of this project as anybody maybe more so than the reservation itself. Chairman Kennedy asked Director Lynch to bring an update of the MOU to the next board meeting. Commissioner Espy said it is still in the Red Book so we have several opportunities to make sure it stays there.

Commissioner Espy moved to accept the staff recommendation to approve the STPP Funds transfer to the IM program. Commission Griffith seconded the motion. All five commissioners voted aye.

The motion passed unanimously.

### ***Agenda Item 7: Functional Classification revision in Billings (Shiloh Road)***

#### **Background**

MDT, with the concurrence of the local officials of the Billings Policy Coordinating Committee (PCC), requests Transportation Commission approval of a functional classification revision on Shiloh Road (MDT Urban Route U-1031) in Billings. The revision consists of changing Shiloh Road from an urban minor arterial to an urban principal arterial beginning at the intersection with Zoo Drive (X-56200, reference point 4.29) and extending north to the intersection with Grand Avenue (U-1004, reference point 0.995) (Exhibit A). As required by Federal law and regulations, this action is contingent upon final approval by the Federal Highway Administration (FHWA).

Justification for this proposal is that with the opening of the Shiloh Road Interchange and the upcoming reconstruction of the corridor, this route is one of the higher volume travel corridors through the West Billings area providing north-south linkage between Interstate 90 and Rimrock Road and MT 3 (N-53) north of Billings. Each end of this corridor, including Zoo Drive on the south and the northern end of Shiloh Road from Grand Avenue to Rimrock Road, is already classified as an urban principal arterial so this revision would provide a consistent classification throughout the corridor that is representative of the service it's providing.

### **Summary**

Billings local officials and MDT are requesting a revision to the functional classification of Shiloh Road from Zoo Drive to Grand Avenue to better reflect the type of service the corridor is providing. This request is consistent with FHWA functional classification criteria.

### **Staff recommendations**

Staff recommends the Commission approve revising the functional classification of Shiloh Road (MDT Urban Route U-1031) from an urban minor arterial to an urban principal arterial beginning at the intersection with Zoo Drive, extending north for approximately 3.2 miles to the intersection with Grand Avenue (U-1004) in Billings.

This action is contingent on FHWA approval of the functional classification revision.

### **Discussion**

Commissioner Howlett asked if that changed the class of money. Sandy said it did not.

Commissioner Espy moved to accept staff recommendations for Functional Classification revision in Billings (Shiloh Road). Commissioner Winterburn seconded the motion. All five Commissioners voted aye.

The motion passed unanimous.

## **Agenda Item 8: Speed Limit Recommendation for Commission**

### **Action. Rustic Road – X-route 32236 & X-route 32210**

Commissioner Howlett moved to adopt the community recommendation for the speed limit of 50 mph on Rustic Road and extend the 35 mph through the community of Turah.

### **Discussion**

Director Lynch asked the Commission to consider the one common denominator in all the speed studies, whether here or any other community is that MDT is the ultimate agency responsible. The department's recommendation takes a lot of things into consideration when they set a speed limit but the Commission does not have to follow that recommendation. You also have the County Commission, which is also an elected body, and the community to consider. If you are going to do something other than what the scientific information states, we highly recommend although we can't require, that the local communities enforce the roadways. Without enforcement there is a chance we could be causing more problems. As the Governor's representative on highway safety, I would have the safety office look at the roadways that have adopted something other than what we recommended in order to keep the Commission informed on the outcome of those decisions. Loran Frazier asked that the motion be clarified – are you making the motion for the 50 mph, then the 35 mph on the bridge and through the community of Turah. Commissioner Howlett said yes. One of the Community Council members said it came down to a safety issue. He felt Commissioner Howlett was right when he said let's not put all our eggs

in one basket by thinking that putting some speed zone signs up will solve that – there are more improvements that will be needed. We have another tool in our box and that is to take a comprehensive look at the corridor and try and address the safety needs. Speed signs will not solve the safety problem. Chairman Kennedy felt the biggest part of the problem is educating the people and making sure everyone abides by the speed limits. I would recommend that we have Director Lynch follow up with a letter to the Community Council and the County Commissioners asking for an enforcement commitment. I would also hope that the County Commissioners would write a letter to the Sheriff's Department and the Highway Patrol requesting enforcement in this area. Without enforcement 50 mph will still creep back up to 70 mph. People who live in the area are probably the biggest offenders because they know when the officer will be there and that is going to take community people watching to make it enforceable. One or two signs in an area are not going to do it. If you have no enforcement and the people don't abide by the posted signs, it doesn't make any difference what speed limit we put on it. Commissioner Howlett said that he appreciated the work and the science that went into this study. I also can appreciate the people who live along that road and the sense of safety they might feel when their children are out there riding a bike or mowing a lawn next to the road. I do try and think of the big picture and not just moving vehicles from point A to point B or the 85<sup>th</sup> percentile. I think it is important to engineer the safest communities we can and I take a lot of pride in representing people's opinions on where they live and what they do to make it a better place. I certainly don't mean any disrespect toward people who have a different opinion. It is simply that I think I understand where the people living there are coming from and I want to support that.

Director Lynch said he remembered when the Commission deviated from MDT's recommendation in Silver Star, Montana. We were looking for a 45 mph through that town and the local people wanted 35. The Commission went with 35 mph. We have done some follow up and the fact of the matter is that the 85<sup>th</sup> percentile is the same today as it was before the speed limit was set. In Gallatin Canyon, the speed limit has been changed a couple of times and we find that no matter what we've done with the speed limit out there, the 85<sup>th</sup> percentile has not changed. So there is also the danger of a false sense of security because you've got the signs up and people think they are going to be followed when in fact they are not. I happen to be from the town in Montana that has the largest speed trap in the State of Montana. The only reason it works is because the cops are out there all the time enforcing it. So if we are going to do this, enforcement has to be there otherwise we are setting up false expectations.

Commissioner Howlett moved to adopt the community recommendation for the speed limit of 50 mph on Rustic Road to the bridge, 35 mph on the bridge and through the community of Turah. Commissioner Winterburn seconded the motion. Four Commissioners voted aye. Commissioner Espy voted nay.

The motion passed four to one.

### **Agenda Item 9: Speed Limit Recommendation for Commission Action – Montana 300 – Town Pump Travel Plaza**

Chairman Kennedy said the recommendation is for a 35 mph speed limit beginning at station 54+00 project F-24-1 and continuing east through 7700 just east of the Blackfoot River Bridge, an approximate distance of 2,300 feet.

Commissioner Howlett moved to adopt the recommendation for the speed limit of 35 mph. Commissioner Winterburn seconded the motion. All five Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 10: Speed Limit Recommendation for Commission  
Action – Secondary 210, Bonner South**

Chairman Kennedy said the recommendation from MDT is 50 mph, then 60 mph, and then back to 50 mph. You have the county recommendation at 45 mph, then 55 mph, then 45 mph. You have the community recommendations from the beginning to the end of the project for 45 mph.

Commissioner Howlett stated he would like to have it be 50 mph for the entire length. It is the difference between what the county and community recommended but it would be for the entire length instead of the 60 mph in the middle – one speed limit. Director Lynch asked the distance of the 60 mph section. He said it was patrolled heavily along the entire length. Commissioner Howlett said it goes all the way to Clinton and is essentially a frontage road.

Commissioner Howlett moved to adopt the 50 mph speed limit through the entire length of the project; it died due to lack of a second. Commissioner Howlett then moved to adopt the county's recommendation of 45 mph, 55 mph, 45 mph. Commissioner Winterburn seconded the motion.

**Discussion**

Commissioner Espy asked how was this going to enforced. Commissioner Winterburn felt the department's recommendation was extremely narrow. The community is making the case that the 60 mph stretch is dangerous because of the two hills. It is too dangerous for people and that is my only holdup – the stretch with the visibility issues. Commissioner Espy said the small town of Ashland Montana, dedicated one deputy until he finally had everybody trained that when you get to Ashland you go 25 mph. That has worked only because they have constantly for all these years put a deputy there that enforced it. Without enforcement we will all put the peddle-to-the-metal when we come to an open space.

Chairman Kennedy asked Director Lynch to send a letter to both the Community Council and to the County Commissioner to ask that they proceed with enforcement and send their letters to the appropriate enforcement agencies. Director Lynch said he would write the letter on the Commission's behalf and will run it by the Commission before sending it. You are really recommending that if the Commission is going with their recommendations then they need to step up to the plate and put some enforcement on the road similar to what Lake County did on the east shore of Flathead Lake. That is an appropriate speed limit but the county stepped up to the plate to make sure it was enforced.

Commissioner Howlett moved to adopt the county's recommendation of 45 mph, 55 mph, 45 mph. Commissioner Winterburn seconded the motion. Four Commissioners voted aye. Commissioner Espy voted nay.

The motion passed four to one.

**Agenda Item \_\_\_\_: Speed Limit Recommendation for Commission  
Action – X-Route 16565, North Frontage Road,  
Bozeman East**

Loran Frazier presented a proposed speed limit request for the north frontage road in Bozeman. The proposal is for a 60 mph speed limit beginning at station 52+00, project I-90-6(23) (the end of the 50 mph speed zone) and continuing east to station

122+00 (300' east of the intersection with Fort Ellis Road), an approximate distance of 1.7 miles. This is for the frontage road along the interstate on the east end of Bozeman. We have an email concurrence from the city of Bozeman. The staff recommends we approve the 60 mph speed limit.

Chairman Kennedy asked about the letter from the city of Bozeman stating the city reviewed the speed study done at the request of the concerned business owners. He asked if that was a request from the city of Bozeman or a private request. Loran said that the businesses were concerned and brought it to the city and the city came to the State. Director Kennedy said he received a call on this project from one of the business owners on the east end of Main Street. Director Lynch asked Loran if the city was in favor of dropping the speed limit from 70 mph to 60 mph in this portion rather than the whole portion. Loran Frazier stated he didn't know if that was an issue. This is a frontage road on the east side of the interstate. He noted the Bozeman city limits have been extended to the east.

Commissioner Griffith moved to accept X-Route 1 6565 – North Frontage Road, Bozeman-East speed limit recommendation. Commissioner Howlett seconded the motion. All five Commissioners voted aye.

The motion passed unanimous.

## **DISCUSSION WITH LOCAL GOVERNMENT & RESIDENTS OF MISSOULA COUNTY REGARDING THE SPEED LIMIT STUDIES**

### **Agenda Items 8, 9, 10: Speed Limit Investigation — Bonner South, Secondary 210, Rustic Road, Highway 200**

**Secondary 210:** Loran Frazier stated they had speed zones for the Bonner South area, Highway 210 is a Secondary Highway. The speed study ran from here to just past the Turah Interchange (referring to graphic). The study was done in 2002 and the speed limit was set at 50 mph, then moves to a 60 mph, and then back down to 50 mph in the area around the interchange. The speed data we looked at in 2007 versus 2002 gave us the same results and we are recommending no change. The community of Bonner had a couple of community meetings regarding this. I've met with them and explained our recommendations. Last week the Community Council recommended 45 mph for the whole length. You have a letter from the Missoula County Commissioners recommending a 45 mph for the 50 mph area, a 55 mph where it is currently 60 mph, and a 45 mph where it is currently signed 50 mph.

Chairman Kennedy asked whether the 45 mph area was residential or business; also whether the 60 mph area was business or residential. Loran Frazier stated the 45 mph area was primarily residential, there is a fire station right here (referring to graphic).

Gary Matson, a resident of West Riverside and a member of the Community Council, stated that the 45 mph area is heavily residential and extends down this way (referring to graphic). He pointed out the residential areas, stating that in between the two areas was not as heavily residential. He explained that when people living in the area back out onto the road, they can't see anyone coming until they are completely on the road. The passing site distance is the reason the community is proposing a lower limit.

Commissioner Griffith asked if there was any access control along this road. Loran Frazier stated there was no access control. Secondary 210 is primarily a frontage road next to I-90. I-90 is full access control. Commissioner Griffith asked who controlled the access. Loran Frazier said MDT controls the state secondary access control.

Commissioner Griffith asked if this road was in Missoula County. Loran said yes. Commissioner Griffith asked if there was any planning effort in that area to control access. No one could answer that question. Duane Kailey said typically MDT works very closely with Missoula County on their subdivision review and will work very closely with them to provide a recommendation for access control. This is a secondary route and MDT approves or denies access on that facility. Typically they defer to MDT concerning access. Commissioner Howlett noted with the removal of the Milltown Dam and anticipated recreation and other things there, this road is going to get more and more use. Commissioner Howlett said he was at that community meeting that was held at Bonner and was appreciative of listening to the community voice their concerns. He didn't feel they were a long ways apart on this issue.

***Rustic Road:*** Rustic Road turns off of Secondary 210, goes in between the railroad tracks and under the interstate and then runs on the south side of I-90 down to the community of Turah. It is currently not posted; there is no speed limit sign out there, so if it falls under the state 70 mph rule. The Community requested a speed zone study to get a speed zone out there. MDT's recommendation is a 55 mph zone down to just this side of the bridge, then a 45 mph and then a 35 mph zone though the community. There is a letter from Missoula County concurring with this. The community would like to see a 50 mph to the bridge, then a 35 mph extended up to the other side of the bridge on the river. This Community Council is fairly new and my understanding is they are to make recommendations to the County Commissioners about items going on in their area. The Community Council is an advisory body to the Missoula County Commissioners. There are no posted signs out there now and some of the data collected showed the majority of people are traveling between 30-39 mph. MDT likes to do a pace, which is a 10 mph space that the majority of the vehicles on the road are traveling. Those are plotted out with the 85 percentile and then the pace is identified. However, you do get stations near an intersection where people are turning and there are always a few flyers that are targets for law enforcement.

***MT 200.*** Some of the other things we look at regarding pace, we have an 85<sup>th</sup> percentile that falls in to keep the 45 mph speed, however, we don't have a pace; we have such a difference of vehicles out there that we feel extending the 35 mph on Hwy 200 – the mix of traffic and the different speeds, we need to get something closer to the uniform speed which is 35 mph. You have a lot of turning movements, a lot of traffic, and a lot of congestion. We are trying to get people to move into a more uniform speed. We are recommending 35 mph based on the spread and the pace and other things going on in that area. Everybody is in concurrence with this.

The last item I will bring up and I believe Officer Hamilton stated it well at the community meeting, that if you artificially set a speed zone far to low it can have the opposite effects of what you intend for the safety. Meaning you will have some who drive that speed limit but the people of habit driving the road will be driving it faster and they will do bad passes and the accident rate will actually go up. He mentioned that in his career as a Highway Patrolman he had actually seen that. Chairman Kennedy stated they had that problem at the Shiloh Interchange in Billings. They set an artificial speed limit of 25 mph in the construction zone and within four months the community came back and asked for a change because the residents were getting tickets for driving too fast. They asked if we could keep the trucks at 25 mph but allow them to go 45 mph because they were tired of getting tickets. Well, you can't do that so the real problem happens when you get too far apart because people will not drive that. The concern I have regarding this study is the 45 mph in the middle area. Are you setting it down too far? If that is a problem, will the people actually drive it faster? If people are building up in this area are we looking to try and control ingress and egress in this area? If so, you need to put it as low as possible. Chairman Kennedy invited the community members to give input to these three items.

A gentleman representing the Community Council thanked the Commissioners for inviting them to speak and thanked Commissioner Howlett for coming to the community meeting. He stated that Loran Frazier has been more than accommodating and helpful to the community. He explained the story started in the Legislature when a bill was introduced to put the speed limits down to 45 mph. Mr. Frazier suggested that was not the best way to approach this and suggested the community work with the MDT process because it would be a little more flexible and we appreciated him coming to us with that. That is how we got involved with the Commission. We pledge as a community to inform our community of your decision and explain why the speed limit was set as you determine.

**Hwy 210** – our reasoning is that the area in between the two residential areas is where the stopping site distance is a problem – there are some blind hills in there so the people are subject to surprise by somebody they didn't expect to be there. There will be some new additional recreational traffic out there as we develop this area which is now in the superfund process. Other things about that section and the Hwy 210 section is that it is a narrow road and there is an increasing population density, numerous driveways with limited site distances due to hills, curves, and trees on private land, a lot of pedestrian use and bicycle use, three hills with limited site distance, above average state accident rate. There is availability to a higher speed route on the interstate. The residents in Chumerell Loop, which is the area on the eastern end, say there is a lot of speeding traffic coming from the east going through their neighborhood. On Rustic Road the people living there could easily deal with 50 or 55 mph. The people who came to the meeting preferred 50 mph but I think they would deal with 55 mph. The reason for the slowdown by the bridge is because there is pedestrian and bicycle traffic across that bridge and there is no pedestrian walkway. There was recently a fatal accident caused by a high speed injury so that is an area where you definitely want to slow down. The community's proposal was 35 mph beginning at the bridge and extending through the town of Turah. Those are our main concerns. Again I appreciate the department's efforts on our behalf to do these studies and to bring them before you in a timely manner.

Commissioner Howlett asked if he was representing the Community Council. He said yes. Commissioner Howlett asked if he was ok with the county's recommendation. He stated the community definitely wanted lower speed limits and the residents have made that very clear and voiced that very strongly.

**Rustic Road:** Jeff Patterson addressed the Commissioners. He stated he lived right next to the bridge. I've lived there for 20 years and I've seen a tremendous increase in traffic. Unfortunately I witnessed the fatality the other day and that accident occurred because of high speed. That is the same high speed I've witnessed on that bridge for 20 years. I can sit in my house just about any time day or night and hear the squeal of tires coming across that bridge and pray it is not another fatality. If there would have been kids, or a bicycle, or a horseman on that bridge three weeks ago, there would have been multiple fatalities. The real issue is that it is a substandard bridge – it has no walkways. It has got two little raised concrete walls on both sides that a person could step up onto but it certainly wouldn't protect them from an out-of-control vehicle. So there is absolutely no way for someone to get away from a high speed vehicle. They will come across at a high speed unless we start habituating the drivers to drive slower. That is my reason for introducing the 35 mph west of the bridge and thereafter – to try and get people habituated to slowing down at that bridge knowing it is substandard. Like Gary said, between 50 and 55 mph on the remainder of Rustic Road is fine and is not an issue.

Commissioner Howlett asked if it dead ends after the bridge. Mr. Patterson said no and showed on the graphic where the road goes – it goes approximately three miles and then up Apple Creek and becomes a logging road from there. It is not a through road but we've seen an increase in traffic because of the development up there. Now there is another 120 acres becoming a new subdivision that will create a whole bunch



of new homes. What we are going to see when the dam is removed is another issue. That is a stretch of the Clark Fork that has been untouched for years and years and is one of the most beautiful stretches of the river. So when that dam comes out you are going to see an enormous increase in traffic through there – bicycles, kids carrying inner-tubes, rafters hauling rafts as well as residents. So I'm really concerned about that bridge and future fatalities that will occur. Just this morning one of my neighbors was headed west across the bridge with two gravel trucks and a couple of trucks with trailers carrying equipment, and they were traveling at least 60 mph headed for the bridge. I plead with you to do something to tell these people they have to slow down. For 20 years I've had a father-in-law who was a Highway Patrolman and I've spent a lot of time in the patrol car. I've been an accident investigator for 25 years so I have a lot of experience with motor vehicle accidents and driver propensities. One of the issues we have is there is no benchmark for law enforcement to write someone a citation for carelessness. The road right now is 70 mph and most patrolman don't want to write a basic rule violation on a 75 mph vehicle at that bridge because they have to go to court and prove it was wanton disregard for the safety of others. In 20 some years I've made many calls to 911; I've talked with patrolman and the sheriff and I always get the same answer – it is 70 mph, what do you want us to do?

Commissioner Howlett said in the five years I've sat on this Commission, the thing that has impressed me the most about this presentation is your community council's willingness to educate the people and your willingness to say if the locals are going to give tickets, then that is the way it is going to be. To me that is a great sign of commitment of the local community and a great deal of concern. I want to help you to reduce those speeds. The things you brought up about people on horseback and kids with inner-tubes and other things that are out there, we ought to be thinking about some safety projects that allow for some pedestrian across that river so I will be advocating on your behalf for that kind of thing. I'm pleased with this community's willingness, desire, and commitment to make their community a safer place.

Commissioner Espy stated they had made a great presentation. We see this quite often throughout our smaller communities and on some of our secondary roads and county roads. How do you propose to enforce these speed limits? A member of the Community Council stated it would be up to the Highway Patrol and the local sheriff's office. A few citations might help habituate the local drivers. Commissioner Espy asked if they had talked to the officers to see if they were willing to work with the Community Council to get this done. The Community Council felt they were. They've always said they would love to come out and slow them down but without a speed limit they could not. Commissioner Espy said it takes a continuing effort by the officers for a period of time – you have to work very hard to convince them they need to be there on a consistent on-going basis. The Community Council said they had visited with the Sheriff Mike McMeekan about that area and he stated that even though they are short of manpower he has two deputies that live on that road, so it can be policed. We have two other tools that we can use; one is the school. Our community council is organizing a school district and they send out a newsletter every week that goes home with all the kids. We can begin focusing on the new speed limit and use that as a tool to help educate people. The second tool is the PFC's signs that are radar displays which flash your speed. There are also the churches and 4-H that can help. Commissioner Espy commended them for the work they had done and the preplanning on this issues.

A member of the Community Council asked Chairman Kennedy about his question – was your question that you wanted to see one speed limit through that section and why the middle section was 10 mph faster and if the community agreed with that? Did you want to see it set at 45 mph on the entire stretch of that road? Chairman Kennedy said his big concern in that area is you have recommended 45mph then 55-60 mph for that middle area, my concern is that if we are not going to have any

restrictions on ingress and egress on the roadway and if we are going to see a lot of homes built in this area, does it make sense to go with the higher speed limit? My other concern is this area is going to see a lot of homes built, and most people do not abide to low a speed limit. Director Lynch stated that is a big concern. I appreciate the community's comments and concerns on this road because they know the roadway better than anybody. The County Commissioners also know what they are doing. The only official study you have is the one done by the Department of Transportation. The concern is we have to be really careful when we set speeds because you will have people who will obey that speed limit regardless of whether they can drive safely at 70 mph or not. Then you will have others who will not even know the speed limit sign is there and they will drive what they are comfortable driving. If you create an atmosphere out there that pits people driving too slow against aggressive driver then you get dangerous passes. We are seeing that a lot in the State of Montana where the differing speeds have caused some accidents. Your job as Commissioners is to make that decision. We have given you the scientific information and you've heard from the community.

Chairman Kennedy said his biggest concern is the middle area not knowing the building that is going to take place and the number of driveways that will be going in. If it is an open stretch area, are we setting it to low at 45 mph? Loran Frazier stated when someone sends in a request for an approach permit to the Department of Transportation our department checks the site distance. They actually go out and check the site distance. So we look at site distance and other things before we approve the approach. We have that control with the approach permit process. It is not as formal as access control but we do check the site distance.

Chuck Teig addressed the Commission. I was born on this stretch of road, and I've lived the last 18 years in the middle of it. He showed the Commission the junction to Bonner on the graphic, and explained there was a fairly undeveloped short stretch between two rail spur crossings, a heavy development area here that has an exit here and here so it is a loop development, so there is not going to be any more ingress/egress here (referring to graphic). Then you have a very dense populated area and a fire station here, then you go down to the crossing for Rustic Road, then there is a blind hill here where there have been quite a few accidents. This is a very dense stretch of population for our country area here and is further infilling but there probably won't be too many more driveway entrances in it but you have a turn right here which is not as evident as it is on the ground but you can't see very far here and the first hill is right here (referring to graphic). At the east edge of that hill there is a driveway at a residence that houses several people, so you've got cars coming out on top of the hill. The next hill is Hayes Hill and their driveway is just over the crest of the hill on the west side and you almost have to have a death wish to drive out of that driveway because people are coming at you at 70 mph and there is about 50 feet of site distance before you hit their driveway. So this area in is not that heavily populated but you've got these two blind hills with a 45 mph stopping distance and there have been some accidents here. The accident rate does show that it is above the state average. This development in here, Chumerall Loop, is subject to having more driveways but is pretty well contained to two driveways. The people who live along this loop are finding that the people coming from the east are the ones hitting the higher speeds and we want to encourage them to hit the freeway instead of this stretch of road. If it is 50 mph here then it ought to be 50 mph the entire distance with a 45 mph around the interchange area. I would encourage you at a minimum to agree to that. The people who live here feel strongly that it should be 45 mph which would give you a consistent speed all the way along here and would be very justified to Buttrey Lane (referring to graphic) and it is just over the second hill and there will be more development there. There is a development planned for this empty field here. When I pull out on the road I will think it is clear and immediately a car is on my tail. If there is no one coming eastbound they are ok, they will go around. There was one child hit by a car a long time ago and there have been a number of accidents along this stretch.

I would encourage you to consider keeping a consistent speed through here – either 50 mph all the way or drop it to 45 mph but I don't think it is safe for you to go 55 mph here for this distance. I think have come to the point that they have to be trained to do something different. We have some experience in the community in putting out flyers at all the local businesses and we have a cooperative Missoulian reporter who is helpful in getting notices in the paper and the school is very cooperative in all these safety issues. We will put the word out. We've got to accept the responsibility if we encourage a change to change people's driving habits. It probably needs to include informing the people east of Turah all the way to Clinton that this is happening so if they want to go faster they can either go to Clinton or the Turah exit and hit the freeway. We would encourage you to either stick with 50 mph or 45 mph for that entire stretch. While you don't have development in that area, you've got the two blind hills.

Loran Frazier pointed out that the accidents on that stretch of road – we looked at a three-year period from January 2004 through December 2006 and found there were seven single vehicle accidents; two rear-end accidents, and one angle accident for a total of 10 accidents. The majority of accidents on this road are single vehicle. Four of the seven single vehicle accidents, alcohol was a contributing factor. One of those resulted in two fatalities. With the fatalities, the accident rate is 1.78 accidents per million vehicle miles traveled and our statewide average is 1.66, so it is slightly above the statewide average.

Commissioner Howlett stated they had three different options. Chairman Kennedy stated they would go with Item No. 8 first, Item No. 9 second, and Item No. 10 thirds. Each one is a different speed limit.

**Rustic Road**

Commissioner Howlett moved to accept the recommendation for Rustic Road - X-route 32236 and X-route 32210. Commissioner Winterburn seconded the motion. Four Commissioners voted aye, Commissioner Espy voted nay. The motion passed four to one

**MT 200**

Commissioner Howlett moved to accept the recommendation for MT 200 Town Pump Travel Plaza. Commissioner Winterburn seconded the motion. Four Commissioners voted aye, Commissioner Espy voted nay. The motion passed four to one

**Secondary 210**

Commissioner Griffith moved to accept the Secondary 210 – Bonner speed recommendation. Commissioner Winterburn seconded the motion. Four Commissioners voted aye, Commissioner Espy voted nay. The motion passed four to one.

***Agenda Item 11: Speed Limit Investigation & Recommendations –  
Secondary 282 & X-route 22925, Montana City of  
I-15 Clancy Interchange***

Loran Frazier stated this was a speed stuffy for a frontage road that runs along I-15 north and south from Montana City to Clancy. MDT is recommending a 55 mph speed limit through that area. Previously it was posted at 60 mph with some portions at 50 mph. The county concurs with the 55 mph through that stretch.

Chairman Kennedy asked about the previous action of the Commission reducing the speed limit along Jackson Creek from 70 mph to 60 mph. Loran stated that was a different action and the study was not completed at that time.

Chairman Howlett moved to accept the Montana City to I-15 Clancy Interchange speed limit recommendation by staff. Commissioner Winterburn seconded the motion. All five Commissioners voted aye.

The motion passed unanimous.

### ***Agenda Item 12: Speed Limit Investigation & Recommendation – Secondary 331, Belt.***

Loran Frazier said this was a proposed speed limit through the town of Belt. We have concurrence from both Cascade County and the town of Belt. In summary it is to put in a 25 mph speed limit through town, 35 mph on each end, and then 45 mph from the end of that to where it connects to Hwy 200. This is an area where there was no official speed zone. MDT completed the study and both local governments concur with our recommendations.

Commissioner Winterburn moved to approve staff recommendation of Secondary 331, Belt. Commissioner Espy seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 13: Speed Limit Recommendation, West Drummond – MT 1 & Frontage Road***

Loran Frazier stated this was another frontage road on a portion of MT 1 in the town of Drummond with a portion of the frontage road running parallel to I-90 after the Drummond Interchange and then down to MT 1 heading east/southeast out of Drummond. Our recommendation is for a 50 mph with 60 mph through portions of it. The county requested that we make it uniform throughout the length of it as 55 mph. We have a letter from Granite County concurring with that.

Commissioner Howlett moved to approve the Drummond – MT 1 Frontage Road speed limit recommendation of 55 mph. Commissioner Griffith seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 14: Speed Limit Recommendation, Old US 10 – Mineral County***

Loran Frazier stated this was another frontage road along I-90 which is Old U.S. 10. This is actually three x-route sections (X-31011, X-31203 & X-31070). We have recommended a 45 mph speed limit and a 35 mph speed limit near Haugen X-route 31011, then 60 mph on X-route 31203 and X-31070, which runs from Tarkio up to the Lincoln Silver Dollar Bar. We have concurrence from the Mineral County Commissioners. This would place a 60 mph speed limit where we have none starting at Tarkio going up through Superior. We skip Superior because they already have a speed zone, then starting up again from Haugen going east. We have the 35 mph zone through Haugen and then 45 mph from there to where it connects with the

county road. The other one is from Slow Lake and is a section of frontage road that had no speed limit and we are recommending 60 mph.

Commissioner Howlett moved to accept the staff recommendations for speed zone, Old US 10 – Mineral County. Commissioner Griffith seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 15: Speed Limit Recommendation, US 2 – Havre West***

Loran Frazier stated this speed zone is on US 2 West of Havre. It is an extension of an existing 45 mph speed limit that is currently 55 mph. There is growth going on at this end of Havre and MDT recommends moving the 45 mph speed limit out. We have a letter of concurrence from Hill County. Our original recommendation was 50 mph and the county has requested 45 mph and we concur.

Commissioner Winterburn moved to accept the staff recommendations for the speed zone on Old US 10, Havre West. Commissioner Espy seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 16: Speed Limit Recommendation, US 93 – Stevensville Wye***

Loran Frazier stated this speed zone is on Highway 93 South of Missoula right through the Stevensville Wye. Stevensville is on the east side of the river. This is where Secondary 269 connects. That area has grown commercially. We have a signal at the intersection of Hwy 269 and Hwy 93. Our proposal is to establish a 45 mph speed zone through the area of commercial buildup and a 55 mph for a portion thereafter, and then it would move to the 65 mph statutory speed limit.

Commissioner Howlett moved to accept the speed recommendation for US 93, Stevensville Wye. Commissioner Griffith seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### ***Agenda Item 17: Speed Limit Recommendation, Big Arm (clarification)***

Loran Frazier stated the speed limit that we adopted in Big Arm (referring to graphic) our engineering recommendation was a 55 mph speed zone through this area drawn in blue. At our meeting we adopted what is shown in green – a 55 mph, 45 mph through the hub of the area, and a 55 mph. When the original 45 mph signs went up we got a lot of calls from the post office which is near the signs. They called Commissioner Howlett and the County Commissioners. So under the direction of Director Lynch, we moved the 45 mph sign and put it back to include this area – a temporary adjustment until we can make it official. Our official speed zone that we adopted is shown in green (referring to graphic). There was a lot of community outcry in response to that so we moved it. We received a letter which is in your packet from the Lake County Commissioners requesting what I have shown in red (referring to graphic) a 55 mph, a 45 mph starting here going all the way to

Wagonhorse, then 55 mph around the corner. I believe that is what they were requesting before except this 45 mph zone is much larger.

Chairman Kennedy asked how long the 45 mph zone was. Loran stated it is close to a mile, maybe 8/10<sup>th</sup> of a mile. Chairman Kennedy said in remembering the original discussion; the County Commissioners were not with us at that time. There was also discussion that we would go around the corner on the left side. We had a very lengthy discussion on this and decided to take a little of the department's recommendation and a little of the county's recommendation and put them together. So you were asked by the county to come back and look at that corner? Loran said the 55 mph speed around the corner was part of the original request. From the information I have the 45 mph section originally was shorter than what we are showing now. They are now asking the 45 mph go from milepost 73 up to Wagonhorse. Commissioner Howlett asked if the 55 mph was around the corner wouldn't it have been included in the speed study? Loran said the speed study went from here to milepost 71. Director Lynch said the Commission is the one that shortened it. Commissioner Howlett said he appreciated the department moving the signs. He asked if it was merely an extension of the 45 mph. He said he studied the original request versus what the Commission adopted just to make sure we didn't repeat what we did before. Director Lynch said the math was done wrong where the signs were originally put. Where we moved the signs I believe was the original intent of the Commission. Commissioner Howlett asked if there was a mile marker to go by. Loran answer yes, mile marker 73. Chairman Kennedy asked once the sign posts were moved, did the calls stop. Commissioner Howlett said yes they stopped. That is why I said it works.

Director Lynch explained there was a bill that came through the Legislature to change the speed limits on Hwy 93 from Canada to Idaho back to its original 70 mph prior to the Legislature taking action, but that will only apply to the areas of roadway that have not been handled by this Commission or past Commissions, so all your work here will not go away. Between now and October 1<sup>st</sup> we are going to identify areas of congestion and accident clusters and try and get as many speed studies as we can so we can bring recommendations to this Commission on that particular corridor so it will not take in an area that we know will be dangerous. We will try and get as many of those as we can to you by October 1<sup>st</sup> addressing the high accident areas first. Some areas will be perfectly ok and we did not oppose that bill. I believe that decision should be made with the science and the Commission setting speed limits rather than someone arbitrarily picking a number. In the long range, it is good legislation, but it is going to cause some problems for MDT to get some speed studies done.

Commissioner Howlett moved to accept the speed clarification for Big Arm.  
Commissioner Espy seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### **Agenda Item 18: Access Control Resolution, STPU 1031, 4666-002, Shiloh Road Corridor – Billings**

Loran Frazier stated this is an Access Control Resolution for Shiloh Road. There are a couple of steps in getting an Access Control Resolution – one is the access control designation so that we can go out and start working on that access control, then the second phase is when we bring it to you for adoption. We have this Resolution so we can move forward with right-of-way on Shiloh Road. We do need to adopt access control so we can move forward and develop the access control plans as we negotiate right-of-way.

Chairman Kennedy asked if the access control was run through the PCC. Exhibit A shows the steps we've been through and the city and county concurred with our findings. Do we have any documentation that people voted on this? I don't want the city of Billings to come back and say that we just adopted this Resolution. Commissioner Winterburn said exhibit C is the summary of the community outreach. Chairman Kennedy stated the city and the county has been at the public meetings but nothing officially has ever been said by our Regional Manager and we've never had a meeting saying "this is what the recommendation is going to be and what we are going forward on." I don't remember ever seeing this Resolution passed through the county or the city for concurrence. We told them this is what we are thinking about doing, but it never was voted on unless I missed something. Loran said he did not have an answer to that question. When I was the Missoula District Administrator we did some access control resolutions and this particular one has more meeting listed in Exhibit C than just about any project I've ever worked on. Chairman Kennedy said he was looking for some documentation stating their concurrence. These folks were at the meetings and the real problem I have with this is that it has never been stated at any public meeting that this is what we are going forward with. I would approve this today if the county and the city are aware of it. I don't want to hold it up, but I just don't want one my colleagues to come up to me and say they never actually gave this a yes or a no. If they haven't that puts me in a real spot. If everybody has concurred with it and if they are fine with it, I don't have a problem with it. Sometimes that detail is missing even though we've had 50 million meetings, it has never been stated exactly what we finally recommend be given to the Highway Commission.

Director Lynch asked if this is a timing issue. Chairman Kennedy said it was a timing issue. Director Lynch asked if this limits the number of intersections on Shiloh Road or does it just state that it is controlled and any additional access has to be approved by the Highway Commission? Commissioner Winterburn said Page Two of the Resolution contained a full listing of intersections and their locations. Director Lynch said they were very clear in the EIS that we were not going to limit it to just four interchanges – that there could be additional access to the roadway. He asked how this affects the process. Loran said this is the first step to access control where we go out and negotiate right-of-way; we need this piece before we can start negotiations. It is timely in that our schedule showed we would be starting this in June. If we do not have this piece, we cannot start. Chairman Kennedy said as you start negotiating right-of-way, and someone decides to give some right-of-way and would like to change an access approach, does this keep you right in line and is this the only thing you can do until it comes back through the whole process? I think we all looked at this and felt you need some kind of direction but there needs to be some flexibility to change it especially as you start negotiating. If this puts everything in concrete so that any change has to come back to this board, I don't think you have the complete concurrence from both the city and the county.

Director Lynch said you are asking two questions – the process question and the concurrence from the local government. The question in terms of locating accesses and designating the nature of the access is controlled by this preliminary Resolution. It does leave a loop hole in there as to how we will evaluate approach applications. It does not designate as the Final Access Control Resolution will, i.e., how many approaches and locations will be established. So yes there is flexibility in there. The question on notice, I don't know if it has been done or not. The Resolution states "future access that is not constructed as part of this project will be considered through city-county planning or through access permitting process as applicable. Future access that adheres to the above criteria may be approved by the city or county." So that means the city or the county can do all of this. "Future access that does not adhere to the above criteria must be recommended for approval by the city or the county and must be approved by the Montana Transportation Commission." When all the other criteria is ok, then the city or the county can make all these decisions based on these criteria. Chairman Kennedy said he did not have a problem

with the document as long as he has some documented concurrence. I would be willing to go forward with this document with concurrence of both the local governments. Commissioner Espy said that the city and the county are mentioned several times but I don't see an actual statement by the local governments. Director Lynch asked Commissioner Espy if she could foresee any problems with the city or the county. Commissioner Espy said she did not foresee any problems at all. Chairman Kennedy said the city was concerned about taking over the right-of-way because they wanted to be able to address the ingress and egress on Shiloh Road so they can address all the pieces on this road. That is one of the reasons they did not want to take maintenance over until they had that full authority. I just want a piece of concurrence. Director Lynch suggested making it part of the motion.

Loran noted the resolution was essentially the guidelines for the department: "right in and right out accesses will be implemented at appropriate existing locations and that other locations consistent with locations or spacing guidelines in our Access Management Plan." This is designated as an access control and gives our people the ability to go out and work out where those accesses will be. Director Kennedy said that someone will want an access and it will come back and they will say the Highway Commission approved this, and this is the only place to put it so if you have a problem it needs to go back to the Highway Commission. It is an easy way for someone negotiating an access to put it back on the Commission. You had a few phone calls on some of those speed limits but I will get a lot of phone calls so I want to make sure I have the concurrence of the local governments.

Commissioner Howlett moved to accept the Access Control Resolution STPU 1031, 4666-002, Shiloh Road Corridor – Billings, subject to concurrence of local government. Commissioner Espy seconded the motion. All five Commissioners voted aye.

Motion passed unanimous.

### **Regular Business – Lamar Issue**

Tim Reardon addressed the Commission saying earlier this morning I had a voice message a little after 4 p.m. on Friday afternoon from the attorneys for Lamar. They have raised a question about my ability to advise this Commission on the Lamar Outdoor Advertising Appeal. The reason is because I also sit as chief counsel for the agency and supervise all the attorneys who handle the case for the department. We have been going back and forth over the potential conflicts with emails and phone calls, and I have written to Mr. Masurek who is one of the attorneys for Lamar, outlining my involvement to this point of the litigation. My involvement up to this stage has been limited to sending you a letter and making sure you have copies and the rules. I've not been involved in the litigation either actively as counsel or for that matter even reviewing the briefs, but my name is on the pleadings. It is on virtually all the pleadings in this agency primarily as a matter of convenience so that if I have a lawyer who is in Missoula trying a case and he has another case in Billings, I can act as the attorney of record. Lamar emailed me a response and I appreciate the fact that they are not raising conflict in terms of my ethical standards, but they are reserving the right on appeal to challenge any "substantive legal issue" that may come up today in which I could be asked by any one of you any question, which sort of negates the whole thing because (1) I don't know what questions might come to your mind during the course of the argument, and (2) any answer that I might give you in the form of advice or commentary is arguably a "substantive legal issue." So I've been going back and forth with what to do and I think the appropriate thing to do since the issue is out there and has been raised, is to continue this hearing to another day. In the mean time the department will find an attorney who will be hired to represent the Commission and to provide you legal Counsel at the oral argument.



While I personally feel comfortable doing it, I think it is a huge mistake to be side-tracked by an issue that I don't think has any relevance. This is an important decision and this is going to be a big case. Lamar is very serious about it, and the Department is equally serious about it. It seems to me to make no sense to have a side issue out there involving the lawyer as anything to take the eye off the ball. So this afternoon at 1:00 p.m. I basically will be making the same speech to you. But the attorneys for the Department and the attorneys for Lamar will all be here and I just want them to concur. It is unfortunate that it happened at 4 p.m. on Friday afternoon but it did. We still have additional time for you to get your final order out but you are going to need to do it and I really think you are going to need an attorney to help walk you through some of this. It is important that the attorney be as impartial as he can be. So at 1 p.m. I'm going to put it on your record while the parties are present and I think you ought to continue this until such time as (1) we can get an attorney retained for you, and (2) that we can bring the four of you who are involved in this back together hopefully within the next 30 days.

Director Lynch said we don't have to meet the deadline because this has been raised; we have time to do this. Tim Reardon said he felt that this was a legitimate cause to extend this. Commissioner Winterburn asked if the attorney who wrote the brief could come in and answer the Commissioner's questions. Tim Reardon said she could come in, but the issue is not so much that the attorneys could argue their case, the issue is that if any one of the Commissioners has a question about this case, any opinion or advice I would give you relative to the application of a statute or rule or an interpretation would be substantive. Lamar is reserving the ability to raise that on appeal, which could result in the whole thing being reversed and we will have to start over and that makes no sense.

Commissioner Howlett said that he had read the briefs and everything else; I don't need to ask you a question to know what I'm going to do. I don't know if the rest of the Commission feels that way. Would it be ok to go ahead with the hearing and understand that we can't ask any questions? Mr. Reardon said he may be answering yourself. We can wait until 1 p.m. and see what transpires but at this point all of the attorneys would prefer that you continue the hearing. Again, my concern is that we do it right. Commissioner Howlett asked if it would be substantive to ask the process to get the continuance. Tim Reardon said perhaps but all the attorneys would be present at 1 p.m. and that is why I want them all here. I do think it is appropriate to move the hearing. Commissioner Howlett asked about the process. Mr. Reardon said when Commissioner Espy convenes the hearing this afternoon, he would ask for the floor and make a motion independently. Commissioner Howlett said to date there has not been a single substantive issue raised ... they are trying to go after the messenger rather than the issue.

Director Lynch said it was up to the Commission. I appreciate your comments but you haven't heard what they have to say. Tim Reardon said their attorneys can argue the law all they want and if a question comes up, you don't know what they are going to say. Commissioner Howlett asked if they listened to them today are we on the record today. Director Lynch said they were on the record today. Chairman Kennedy asked if they opened the hearing and Tim Reardon said what he wanted to say, then we will need legal counsel before we can go on. Since we need legal counsel I would continue the hearing for another date. The date can be set before our next board meeting and by then we will have a new counsel and we can move forward. I wouldn't have anyone come back up to do any arguments because you don't want to do anything until you have your own legal counsel. Tim Reardon said it is important that you have legal counsel. I think I would be remiss in suggesting that you go forward without a lawyer. The department will hire an attorney. Commissioner Espy said Tim has just handed the Commission the basic information needed but as far as I know he has not given anybody on this Commission any advice on what to do. He has made that very clear in his letter that we had certain boundaries that we have to

follow. Commissioner Espy said she would be very nervous going in without an attorney.

Commissioner Howlett said from his perspective the amount and type of information that was sent out to the Commission was well prepared and helped me prepare for this case and I appreciate that. You did a great job.

### ***Agenda Item 19: Letting Lists***

Loran Frazier presented the letting lists for March to August, 2007. We finally received our federal funds for letting some projects. As you can see March was out the door and approved, April was opened last week, May has quite an extensive list, there are two projects in May, Spring Creek Road and Missinger Trail, that may be moved to June. The other project is Hamilton North of Woodside which has been delayed – we have all the right-of-way purchased except for an outdoor advertising sign which is owned by Lamar. We won't be able to clear the right-of-way so it is likely to be moved to September or maybe August. Those are the only corrections for May. We are looking at about \$28 million in May, \$4 million in June, and \$6 million in July.

Chairman Kennedy asked if they ever got a concurrence from the Carter County Commissioners on the earmark and are we going forward with Forty Kilometers South of Ekalaka project. Director Lynch said yes we did get a concurrence from Carter County Commissioners. Commissioner Howlett asked if they were holding any projects back because of concern for funding – so this money is what we are going to get for the year. Director Lynch answered yes. He said the move the Senate made was very beneficial for Montana. Chairman Kennedy said if the legislation hadn't gone through Montana would have been about \$46 million short this year. By getting that through we are up to snuff on the majority of projects that we had planned in the Red Book. Director Lynch said that after they let the Spring Creek to Missinger job there were two projects to build up on the 93 Corridor North of Missoula absent Nine Pipe but with the Legislature doing what they did, we have not spending authority to do them. We lost \$26 million dollars when they didn't complete their work. Commissioner Espy asked if we would get that back. Director Lynch said no, we have to start all over.

Commissioner Espy moved to accept the letting list as presented by Loran Frazier. Commissioner Griffith seconded. All five Commissioners voted aye.

Motion passed unanimously.

### ***Agenda Item 20: Certificates of Completion***

Loran Frazier presented the Certificates of Completion for January, \$21,080,358 and February \$18,106,093. Staff recommends that we approve the Certificate of Completion for the projects.

Commissioner Espy moved to accept the Certificates of Completion as presented by Loran Frazier. Commissioner Griffith seconded. All five Commissioners voted aye.

Motion passed unanimously.

### ***Agenda Item 21: Change Orders***

Loran Frazier presented the Change Orders for January, \$1,314,189.19 and February \$224,056.17, for a total of \$1,538,245.26. The item for January is one of the larger Change Orders we have to fix the slide a Klaggett.

Commissioner Espy moved to accept the Change Orders as presented by Loran Frazier. Commissioner Griffith seconded. All five Commissioners voted aye.

Motion passed unanimously.

### **Agenda Item 22: Liquidated Damages Lame Deer North; Wilson Street- Miles City; Dutton North and South; Helena-East Helena**

Loran Frazier presented the Liquidated Damages for Lame Deer North totaling \$1,505 for an overrun of one day; Wilson Street in Miles City in the amount of \$15,050 for an overrun of 10 days at \$15,000 per day; Dutton North and South for a total of \$11,228 for an overrun of 4 days at \$2,800 per day; Helena-East Helena for a total of \$27,909 for an overrun of 18 days at \$1,105 per day. Staff recommends these assessments for the four projects. Loran stated there was no feedback from any of the companies. No action was needed by the Commission.

### **Agenda Item 23: Commission Discussion**

Director Lynch said he was asked by the Commission to keep them informed on a few projects – East Belgrade Interchange and Custer Interchange, and the other one is the Shiloh Road Corridor. We are moving those projects along as scheduled.

**Custer Interchange.** The environmental document for the Custer Interchange is done and we have a design that is in the preliminary stage, we've had meetings with the local landowners who are very concerned about the extent of this interchange. It doesn't just involve the interchange itself but it also involves several roads that will be affected by the interchange. It is potentially a \$15 million project and one of the major players in the cost is the acquisition of the right-of-way. We've had some meetings with the local developers and the landowners of the adjacent properties to inform them that if they want to move this project forward obviously the department has to come up with some funding. We are hoping to get an awful lot of support, even donated right-of-way, or right-of-way that can be donated to us or sold to us for what they paid for it. We are looking at how much they want to cooperate with us. We have one major developer that has not come to the table or participated, however, we are going out to him individually and discuss how much interest he has in the interchange and how much he would be willing to help move this process forward. He can say no and ask for the highest and best price. We've discuss that with members of the community and explained that is a possibility. We need to look at all the areas necessary where we can come up with some funding for this interchange. Right now we are in the process of communicating with the adjacent landowners and developers to see what part they would be willing to play in the funding category of this interchange. Within the next three weeks we will be meeting with all the landowners individually to try and get an understanding. Sometimes it is very difficult in a group setting to get one to commit one way or the other. At least they understand our concern and they are aware of the reality that this could be a very expensive project and within the core funding program of the department we don't have the funding and are not able to do that without some help either through them, through RSIDs at the city and county level, and obviously we will be looking to the federal delegation to see if there is any assistance they can give to keep this project moving forward. MDT will move the project forward as we promised but we are

also keeping them abreast of how difficult the funding package will be and offering them some input and some opportunity to comment on the process.

I believe it is going very well and I expect as we get farther along in the design and get into buying right-of-way we will really see where we stand. We were able to negotiate with the Power Company to move a very significant impact, the natural gas line, and that agreement has all been taken care of. So that is one problem that could have held the project up. It seems to be moving forward not as fast as we would like to see but we have some small hurdles to cross before we can really get moving on it. Commissioner Howlett asked if they were done with the environmental on Custer. Director Lynch said yes.

***East Belgrade Interchange.*** We are not quite as far along as we are with the Custer Interchange. That also involved a Memorandum of Understandings with local governments. There is been an environmental process going on – the environmental document is not completely done yet. There are some things the local communities will need to do according to the environmental document. The MOU will have to be part of the environmental document and that has been agreed upon. So we are moving that project forward too. This is going to take some participation financially outside of the Department of Transportation to fund that project. Chairman Kennedy said the concern he has is that we are building a bigger interchange than what the community wanted. Director Lynch said they had a meeting with all of the people because there was some confusion about who was building the interchange. When we brought all the players to the table it was not MDT that was building all these impact roads it was actually their hired engineer who had all these big designs for all these roads. When we got all the players together it was recognized this was not a Department of Transportation issue, this was more of a local issue. It has been decided that they don't need a lot of that. So they have revised their part of the process. Two of the three County Commissioners were at that meeting as well as their County Planner and also the city people. Chairman Kennedy said he heard from the one County Commissioner last week who did not understand that. Director Lynch said he would talk to Mr. Murdock. He was well aware of that. Chairman Kennedy said the complaint was that we are requiring larger five-lane roads than they felt they needed. That complaint came to me last week second hand so if you met with them last January, it shouldn't be on the board. Director Lynch said that had all been resolved. Chairman Howlett asked if they revised the estimate. Director Lynch said he did not know; that was something they would be responsible for.

So Belgrade Interchange is moving forward slowly similar to how we carried the South Interchange and the Custer Interchange and the Shiloh Road. We think that is very effective. Director Lynch said it was real clear in the Belgrade meeting that the concern the local community had about the significant impact to infrastructure they were going to have to provide was clearly driven by them and not by MDT.

***Shiloh Road.*** Chairman Kennedy said the folks on Shiloh Road have been very happy to have these meetings because they feel they are up to date and involved in the process. Director Lynch said it had been very beneficial to MDT because when you bring the whole group together they realize it is not MDT or Federal Highways or one area in particular that is holding the project up and that the only way to move the project forward is for everyone to work together and cooperate on time lines and do what they are required to do.

Director Lynch said the public comment period ended February 12, 2007. They received about 45 comments, 35 written comments and 10 oral comments. No comments were a factor in slowing down the project. A rough draft for right-of-way plans should be delivered this week. So that project is moving. The City of Billings has indicated that the update to the City Transportation Plan for the constrained funding is essentially on schedule for April 20, 2007. That is moving along fairly quickly. Again we have to get through the right-of-way process.

Chairman Kennedy said he was back in Washington last week and Belgrade and Shiloh Road came up for earmarks. Those are two major earmarks that have gone back to the Senate.

**Airport Road.** Chairman Kennedy asked if MDT was going forward with Airport Road because he didn't recall seeing that in the bid letting. Director Lynch said they would get back to them on that one. Funding is not an issue on Airport Road.

**District Visits.** Director Lynch said that MDT does District visits to meet with the Division Administrator and look at the project that are on the ground. He told the Commissioners they are more than welcome to come along on those visits. Those visits are already scheduled and I will get you the dates and you are more than welcome to come along. We also do Employee Appreciations in the Districts for years of service and I will get you the dates of those also. To give you a heads up I would like to get with all of you and try and get some scheduled dates – we can work with your schedule and with the Division Administrator's schedule prior to the Red Book process so that you can participate if you want to see some of those projects and visit with the Division Administrators. You can always meet with the District Administrators by yourself but that is available if you would like to do that. Commissioner Espy said it was very rewarding to do that and see how the plans are progressing. Chairman Kennedy asked if they attended those can the department be billed for the costs. Director Lynch said yes.

**Memorial Day Celebration.** Director Lynch said there is going to be a major happening in the Polson Community over Memorial Day. They have a bridge on Hwy 93 that is going to be named "Armed Forces Memorial Bridge." They have a monument that is off highway property that is going to be unveiled to recognize members of the armed forces anywhere in Montana. It will be a two-day celebration with dedication on May 27<sup>th</sup> then on the 28<sup>th</sup> the National Guard and several military dedications will take place in the school gymnasium. If any of you are interested in going I can get you the information. Several Generals have been asked to attend and I've been asked to speak on behalf of the Department of Transportation as well as Janet Taylor, the District Representative in the Polson area, and also some local people who have been asked to speak. It is not being organized by the Department of Transportation; it has been organized by a local banker, Rick Skates. The day they are going to actually dedicate the bridge is May 27<sup>th</sup> at 4:00 p.m. I can get you the time period and the agenda.

Commissioner Howlett said the Commission had approved the dedication of a Bridge in Hamilton also and asked when that was occurring. Loran Frazier said that is a road project they are trying to get done but we have been caught up in legal problems with the sign with Lamar Advertising. Chairman Kennedy said it was supposed to be finished this spring but it is not going to happen in that timeframe. Director Lynch said right now the talk is that once the road is connected then they will have the dedication. Commissioner Howlett asked how somebody who owns a sign stop a highway project. Director Lynch explained that MDT purchased a piece of right-of-way that had an outdoor advertising sign on it. The outdoor advertiser felt that he could just move the sign because he had a larger easement than the piece of ground we wanted and the remaining easement on the private property was large enough to hold the sign. So we purchased the property and paid him the cost to relocate. He was under the impression he could just move the sign over onto the next person's property but the other property owner said he could not place the sign on his property. So at that appoint Lamar said they would not cooperate with MDT in purchasing the property so it forced us to go into condemnation. Even if we go with quick take, that takes about 6 months. So that has held up the project. We had an agreement with the sign company and at the last minute they decided they would not give the sign up so it forced us to go with the quick take. Commissioner Howlett said it certainly does not do them any good – they are holding up the project.

Director Lynch said they actually had two issues – Lamar and the private land owners. Those two could work it out if they wanted to but instead we are, unfortunately, the Hamilton project is again set back until we get this resolved. Loran Frazier said MDT thought they had agreements with them; we had purchased the property from the landowner, the sign company had an easement we purchased. We settled with the landowner and they even took down their sign and we thought we were moving forward cooperatively until the landowner said the easement went away as soon as they took their sign down so it is no longer an easement.

**Legislature.** As you all know because the Legislature did not pass the budget bill on time, we basically have to start over in a Special Session. Chairman Kennedy asked if the piece on Shiloh Road went through. Director Lynch said all of those went through and the only thing that didn't go through was the budget. The non-money bills went through. Deputy Director Currie said the money bills didn't go through, the long-range building bill did not go through, and no tax relief went through. Director Lynch said he feels very confident that, given time to cool down and the Legislators come back in, the budget will go through. At this point there is no date set for the Special Session but it should be well before the first of the year. Commissioner Espy said Montana was the laughing stock of the nation. Director Lynch said he felt what they were seeing was the result of Term Limits and Commissioner Espy agreed. Director Lynch said we are seeing Legislators come in who have not been around long enough to become Statesman – they come in with their own agendas and egos and they can't set that aside like you used to see.

**Cooke City Speed Zone Study.** Commissioner Howlett asked about the agreement on the Speed Zone by Yellowstone Park and Cook City. Director Lynch said the speed study had been done and they've had conversations with the county on that. Deputy Director Currie the county had asked them to do a speed study on the new section of highway that was built going toward the boarder because the cars were rolling into Cook City too fast. Yellowstone Park had agreed to put the signs up if we would do the speed study because they had no jurisdiction to do it. Commissioner Howlett asked if the signs were up. Director Lynch said no because the Commission had not taken any action on that. Chairman Kennedy asked if they had jurisdiction on that highway. Deputy Director Currie said MDT did the right-of-way for Federal Lands not the State. He explained the dilemma – the new highway is a nice wide highway with about a 40-foot top so the cars roll into Cooke City around 50-55 mph. So the Park approached Yellowstone Park about putting some signs up and the Park said they have no jurisdiction. So I approached the Park to see how we could make this happen. We came to an agreement that MDT would do the speed study and Yellowstone Park would put up the signs that nobody will enforce. Commissioner Howlett said they had enforcement on the section north of West Yellowstone. Director Lynch said that piece was inside the Park. The only enforcement the Park does outside the Park is in a life or death situation. Chairman Kennedy asked if MDT could find out about that. Director Lynch said he would follow up on that next week.

**Misc.** Sandy Straehl said her staff went back in the files two and half years and could find no evidence the PCC had taken any formal action on the Access Control Resolution so we are working with Loran's staff to make sure that gets on the agenda as soon as possible. Regarding Airport Road project – that is in the Billings TIP for 2008. It should be ready this spring but it is in the TIP for 2008.

#### **Agenda Item 24. Public Comment**

No public comment was offered.

## **Agenda Item 25: Next Commission Meeting**

Chairman Kennedy stated there were Conference Calls slated for May 7<sup>th</sup> and June 4<sup>th</sup> the regular meeting is scheduled for June 28<sup>th</sup>. Commissioner Howlett asked if one of those would be at somebody's district. Chairman Kennedy asked the Commission if they wanted to do a Commission Meeting outside of Helena in July. He said the 28<sup>th</sup> meeting could be moved to July. He asked Lori if she could work on a date in July for a Commission Meeting outside of Helena. It would be two days – a field trip and the meeting. Chairman Kennedy said they would cancel the June 29<sup>th</sup> meeting and move it to a date in July. Director Lynch said it would tentatively be July 18-19. Commissioner Howlett said he would prefer to have the meeting in Kalispell or somewhere up that direction. Director Lynch said they would work on a place to have the meeting in Kalispell.

Sandy Straehl said that the Commission would be receiving a copy of a draft STIP, State Transportation Improvement Program. It is a federal requirement. We are updating it now because there is a federal deadline to update it in July. We will have to get it updated in June in order to meet that deadline. The reason it is important to update it now is because there is a whole bunch of other federal requirements that hit the boards in July of this year. So we are trying to make sure we have a very complete document so we can move forward without any interruption. Hopefully we will have all the questions resolved for the June 4<sup>th</sup> meeting. So if you have questions, I encourage you to pick up the phone and get them resolved before June 4<sup>th</sup>. This is a federal requirement and is very important. It is not the Red Book which is actually setting the obligation authority for the project, but unless we have approval in the STIP we can't move the federal money forward. So I ask you to take a look at it when the draft arrives and resolve any issues you might have with it. We are going to ask you for an action on June 4<sup>th</sup> to finalize it. Then I will deliver it to FHWA so they can take their action before July 2007.

## **Hearing – Lamar Outdoor Advertising Appeal**

Chairman Kennedy recused himself from the hearing. He handed over the Chairmanship to Nancy Espy. Commissioner Espy welcomed everyone and introduced herself as the Hearing Officer. She called Tim Reardon to be heard.

Tim Reardon said thank you to the Commission and introduced himself. I am the attorney for the Board and also for the Department of Transportation. This is the time that was set to hear the oral argument in the appeal of an outdoor advertising claim brought by Lamar Outdoor Advertising. It stems from the denial of an outdoor advertising permit by the Department. The parties had a contested case hearing in front of the Hearing Examiner appointed by the Commission from the Office of the Attorney General. They have filed all their briefs; they have established their record; you've got exceptions to the findings, conclusions, and before you is a recommended order Findings of Fact & Conclusion of Law from Pam Collins who was the Hearings Officer. That is where we are at this point in time.

Friday afternoon about 4 p.m. after I left the office and because the Director was having quite a bit of fun at the Legislature and when they adjourned he had no else place to go, Joe Masurek who is one of the attorneys representing Lamar Outdoor Advertising, called me and left me a voice mail message with respect to this hearing today. I did not get that message until this morning about 6:30 a.m. In the message Mr. Masurek raised the question on behalf of his client about the possible if not actual conflict of interest that I might have as Counsel for the Transportation Commission as well as Chief Counsel for the Department of Transportation. I think in fairness the rationale for his phone call is legitimate at least on its face. My name is on the pleadings in this case, which are part of the record. Just by way of explanation

my name is on the pleadings for this agency in all matters that are litigated with no exception in the last 12 years. There is always a lead counsel under my name who actually does the hearing and conducts the litigation. My name is there primarily as a matter of convenience and came about simply because the nature of the work here is that the staff is scattered around the state and often times I could have an attorney trying a case in Missoula or Billings and another case they are working on in the Flathead, the attorney will call for a brief extension or something else. We just found it was easier if I was able to sign the Stipulation or what have you. So that basically is the reason why my name appears on those pleadings as they do in every other case that this agency is involved in. Nonetheless it is there and it is a matter of record and my name is as Counsel of Record.

Even though it is kind of late in the game and Mr. Masurek has already apologized for that. It is unfortunate from a timing perspective more than anything. But the reality of it is with the potential issue of conflict having been raised, it is necessary to address it. Through a series of emails and exchanges of phone calls, I sent a letter to Mr. Masurek this morning and to Mr. Green who is co-counsel for Lamar explaining my role in this litigation which has been zero. I explained my role with this Commission which to date has been to send you a letter outlining the procedure involved in appeals of the Administrative Procedures Act. I shared that letter with them this morning. And I also sent you copies of the statutes and the rules and I think I gave you some suggestions in terms of the process you use relative to sticking to the record that was raised. Through that series of emails and what have you this morning, we did get a response from Mr. Green on behalf of Lamar. I appreciate the fact that they agreed that they weren't necessarily challenging my integrity or my impartiality here, but reserved unto their client the right to challenge on appeal any substantive legal issue today and for which any member of this Commission might ask me for guidance or advice.

That is one of those things that is kind of a Catch 22 because I have no idea what questions could be prompted today either from the review of the materials you already have or during the course of the argument. And so I'm unwilling at this stage to go forward with that caveat of reserving that right.

I want to emphasize, it is the responsibility as lawyers to raise the issues to protect their client. That cuts both ways – for Lamar and for the Department. The one thing I do not want to happen in this case is for the Commission to take its eye off the ball wondering, worrying, or being concerned whatsoever about issues other than the substantive issue of this appeal. That is the permit issue. It should not have anything to do with what advice or commentary I may give so that could be a sidetracking issue if this matter gets appealed. It is just not worth it. It is an important case. It is important to Lamar and it is important to the Department and it is equally important to me, and I think ultimately to you, to get it right. There is just no reason other than perhaps an inconvenience to go forward today and maybe create an issue that doesn't need to be there. This thing ought to be heard and decided on its merits regardless of whether any member of the Commission thinks I might be acting inappropriately toward Lamar or anybody else is irrelevant. It is irrelevant to me. I don't believe it and it's not been indicated to me that there is any specific allegations regarding my representation here but just the specter of giving legal advice to you during the course of a hearing would be substantive almost by its nature.

So my recommendation to you today and since all the lawyers are here, I'm not worried about giving you this advice. But my recommendation to you today is that you continue this hearing; that you reschedule it at a reasonable time and hopefully within the next 30 days as your schedules permit and that you reschedule your oral argument. In the interim we will find, locate, and hire an attorney that hopefully will be experienced in administrative law, who can advise you. We will provide him or her copies of the record and all the legal documents that you have, and will provide



each of you their phone number and name and what have you and the hearing will be set again hopefully here in Helena.

It is unfortunate again that this is so late in coming. I know you've worked on this. It is a large record. The good news is that the effort you have put in this will not be wasted or for not. Nothing is going to change between now and whenever you ultimately do get this heard in terms of the facts, the arguments, and presumably not the lawyers, although Mr. Roterling is going to retire. Beyond that it is important, I think, for you to have an attorney that can assist you. The Montana Administrative Procedures Act is fairly specific as to what your role is, your charge is, and how you resolve contested cases. I just think it would be a terrible mistake to go forward and create an error or possible grounds for reversal on appeal that is anything other than substantive. It is just not fair and it is just not right. Again the object here is not to give you the appearance of a fair hearing it is to actually have a fair hearing. Anything that puts even slightly a cloud on that is just wrong.

With that I'm going encourage you to continue this hearing until we can meet the conditions. The attorneys are here, Carol Growmars and Nick Roterling for the Department of Transportation, Mr. Masurek and Mr. Green are here on behalf of Lamar Outdoor Advertising. As I say I've been trading email and voice mails and running in and out of your meeting all morning trying to address this and I think they are all in agreement. I don't know that anybody is particularly happy with the delay but I would rather have them all unhappy with the delay and happier with the results. That is the bottom line. Thanks to the Chair.

Commissioner Espy said we regret having Tim Reardon have to take this avenue and leave us with breaking in a new attorney for a short period of time because he has always given us the very bests of advice. He certainly in this matter has restrained himself from giving us any inclination of anything except what he has sent us to read. He has encouraged us never to speak to each other about it until after this hearing. I appreciate very much the advice that he has given us, we feel that it has been worthwhile, we have studied diligently all the papers he has given us. I appreciate all of you coming and making the effort to be here. I too am sorry that we could not have gotten this communication earlier in the week so you would not have had to make the trip. We will certainly be looking forward to getting this matter resolved hopefully once and for all.

At this time, having said this, I have never found Tim Reardon to be in error in his judgment to this Court, so therefore I am stating to the Commission, to those of you present, and to the Administration, that we will definitely hire an attorney, and Mr. Reardon will be in charge of this, to represent this Commission for the Hearing with Lamar. With that I am going to determine that we will continue the Hearing and we will get you a date that it is acceptable to my Commission, to the Administration, and to you people. We thank you for making the trip up and we hope to see you on a specific date in the very near future.

**Adjourned:** Commission Espy adjourned the meeting.

Bill Chairman Kennedy, Chairman  
Montana Transportation Commission

Jim Lynch, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission